Supreme Court, U.S.
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No. 89-1351

IN THE

Supreme Court of the United States

OCTOBER TERM 1989

JOHN CARAMADRE,

Petitioner,

v.

THOMAS A. FULCOMER,
Superintendent, State Correctional
Institution, Huntingdon, Pennsylvania and
THE HONORABLE ERNEST PREATE,
Attorney General for the Commonwealth of Pennsylvania,

Respondents.

APPELLEE'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Timothy P. Creany, Esq.
District Attorney
Cambria County Courthouse
Ebensburg, PA 15931
(814) 472-5440 Ext. 280

BEST AVAILABLE COPY

QUESTIONS PRESENTED

Whether this Court should decide if due process mandates a change of venue, when the only issue presented to the jury was the credibility of the Defendant versus the credibility of the Defendant's alleged coconspirators, and, for the nineteen months preceding the trial, the media wrote extensively about this case.

PARTIES TO THIS PROCEEDING
IN THE COURT BELOW

This action, as filed in the United States Court of Appeals for the Third Circuit, was styled **JOHN CARAMADRE, P9188, vs. THOMAS FULCOMER, ET AL.**, [JOHN CARAMADRE, Appellant, (W.D. PA. CIV. No. 89-0239)] at CA. NO. 89-3416.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS

The petitioner, John Caramadre, was charged with criminal homicide, conspiracy to commit kidnapping and conspiracy to commit criminal homicide by a Special Investigating Grand Jury empanelled in Blair County, Pennsylvania.

On April 2, 1985, the petitioner, after a trial by jury, was found guilty on all charges although the jury found the petitioner guilty of murder in the second degree.

The defendant's motions for a new trial and in arrest of judgment were filed on April 4, 1986.

On April 29, 1986, the Honorable Caram J. Abood sentenced the petitioner to life in prison on the murder charge and concurrent ten to twenty year sentences on the other charges.

The petitioner filed a timely appeal to the Superior Court of Pennsylvania which was docketed to 797 Pgh.

86. The Superior Court affirmed the conviction on the murder charge and reversed the judgment of conviction on the other charges.

On September 15, 1988, the Supreme Court denied the Petition for the Allowance of Appeal filed by the petitioner.

A brief statement of facts which gave rise to this case is as follows:

The testimony revealed that the petitioner, John Verilla and Vincent Caracciolo were the original members of an organization in Altoona, Pennsylvania, called "the family". The purpose of the organization was to control the illegal drug market, numbers business and other illegal activities in the area. The Altoona organization was connected with the LaRocca crime syndicate in Pittsburgh.

The testimony also revealed that the "family" engaged in other criminal acts necessary to aid the business of the family. Among these acts were the removal by Vincent Caracciolo of a part of the finger

of Joseph McDermott, a competing numbers writer. The family also had Doctor John F. Maras, an Altoona area physician, write prescriptions for drugs for people sent to him by the organization and who would have the prescriptions filled and deliver the pills to the family for disposition by them.

One of the people employed by the family in this capacity was one John Henry Clark who later became dissatisfied with his treatment by the organization and who threatened to inform the police of the family's drug operation and of the incident involving Joseph McDermott.

On Janurary 23, 1979, during a trip to Johnstown allegedly to consummate a drug deal, Caracciolo murdered Clark by means of a hatchet, in or near Mineral Point, Cambria County, Pennsylvania, and setting the car on fire. The autopsy revealed the cause of death was the blow to the head and not the burning of the car. Caracciolo and those who accompanied him, Preston Ryan, Joseph Martino and Marvin "Wax" Wansley then returned to Altoona in the Ryan car.

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REASONS FOR DENYING A WRIT OF CERTIORARI

In order to afford the defendant an impartial trial, it is not necessary that jurors be totally ignorant of facts and issues involved in the case. **Irving v. Dowd**, 366 U.S. 717, 81 S.Ct. 1639 (1961).

Moreover, the mere exposure to publicity is not sufficient, standing alone to give rise to a presumption that the defendant will be deprived of his right to be tried by fair and impartial jurors. The test for determining impartiality of jurors by reason of exposure to publicity is whether any potential juror can lay aside his own personal opinion and render a verdict based on the evidence presented in court. **Goins v. McKeen**, 605 Fed. Rep. 947 (1979).

Moreover, as to those jurors who did express some preconceived notion as to guilt or innocence out of an abundance of caution, the trial judge dismissed every one of them for cause even though he was not legally required to do so. **Irving v. Dowd, supra.**

The record clearly indicates that each prospective juror was closely questioned about his or her knowledge of the case and about whether or not he or she had opinions which would prohibit the juror from returning a verdict based upon the evidence introduced at the trial and the instructions of the court.

Each of the jurors in this case as well as the alternate jurors stated under oath that they could return a verdict based solely on the evidence introduced at trial and the instructions of the court.

Furthermore, at each periodic recess during the trial and at the conclusion of the trial at the end of each day, the court further admonished the jury not to read newspaper articles or listen to news casts regarding this trial.

The trial court in the instant case took the added precaution of sequestering the jury from the date each individual person was accepted as a juror until the jury returned its verdict.

Moreover, the Court closely examined the articles which appeared in the two newspapers of general circulation in the area, namely, the Johnstown **Tribune-Democrat** and the Altoona **Mirror**. The trial court concluded that the articles were factual and objective reports of the events leading up to the trial.

Specifically, the lower court found as follows:

a) While John Clark's murder itself might be sensational, the resulting publicity was not. (Opinion, p. 10);

b) The mere reference in news articles to organized crime did not render those reports "sensational and inflammatory publicity slanted toward conviction." (Opinion, p. 10);

c) Most of the news reports submitted as exhibits made no mention of appellant. (Opinion, p 10);

d) Two-thirds of the news reports in the reproduced record were published by the Altoona Mirror, the circulation of which in the most heavily populated part of Cambria County is virtually nil. (Opinion, p. 11);

e) Considerable periods of time elapsed during the eighteen month pre-trial period during which no publicity occurred. (Opinion, p. 10).

Moreover, it would seem that if the jury was "hell-bent" to convict the defendant it would have convicted him of murder in the first degree as urged by the Commonwealth instead of returning a verdict of guilty of murder in the second degree.

It is respectfully submitted that the lower court took every reasonable step to insure the defendant a fair trial and that the defendant was not denied a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

/s/ Timothy P. Creany

Timothy P. Creany, Esq.
District Attorney

Attorney for Respondents

COMMONWEALTH OF PENNSYLVANIA:
: ss
COUNTY OF CAMBRIA :

AFFIDAVIT

I, Timothy P. Creany, District Attorney of Cambria County, Pennsylvania, trial counsel in the above captioned matter, being duly sworn according to law, do hereby depose and say that I am a member in good standing of the Bar of the United States Supreme Court, having been admitted to practice on March 31, 1980; further that three true and correct copies of this Response were served by First Class, United States Mail, Postage Prepaid, upon the following counsel of record on April 11, 1990:

Stanley W. Greenfield, Esq.
Greenfield Court
1035 Fifth Avenue
Pittsburgh, PA 15219

I do further certify that an original and forty copies of this Response were mailed by express mail on April 11, 1990, addressed as follows:

Clerk of the United States Supreme Court
1 First Street, N.E.
Washington; D.C. 20543

/s/ Timothy P. Creany

Timothy P. Creany, Esq,
Attorney for Respondents

Sworn to and subscribed before
me this 11th day of April, 1990

/s/ Tammy M. Krupa

Tammy M. Krupa, Notary Public
My Commission Expires October 9, 1993.